IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 13436 of 2005
WITH SPECIAL CIVIL APPLICATION No. 14336 of 2005
WITH SPECIAL CIVIL APPLICATION No. 14349 of 2005
WITH SPECIAL CIVIL APPLICATION No. 13659 of 2005

For Approval and Signature:
HON'BLE MR JUSTICE DN PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GSF MEDICAL & PARA MEDICAL ASSOCIATION - Petitioner(s)

Versus

STATE OF GUAJRAT THR' SECRETARY & 1 - Respondent(s)

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Appearance :
LEARNED SENIOR ADVOCATE MR N.D.NANAVATI WITH MR MITUL K SHELAT for Petitioner No(s).: 1.
LEARNED GOVERNMENT PLEADER for Respondent No(s).: 1.
MR BHASKAR P. TANNA, SR.ADVOCATE ASSISTED BY MS.MAHROOK KERRAVALA, ADV.FOR TANNA ASSOCIATES for Respondent No:2.

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CORAM : HON'BLE MR JUSTICE DN PATEL

Date : /08/2005

CAV JUDGMENT

Rule. Learned Government Pleader Mr.A.D. Oza waives service of Rule on behalf of Respondent No.1 and Mr.Bhaskar P. Tanna waives service of Rule on behalf of

respondent No.2

In all the aforesaid petitions a common question has been raised, which is pertaining to fixation of management quota and government quota in the medical and paramedical courses at the colleges run by the petitioners.

2. It is submitted by the learned senior advocate Mr.N.D. Nanavati that the respondents have not considered the relevant facts and factors while fixing the management quota and government quota seats. It is submitted by the learned senior advocate that in the year 2003-04, a management quota fixed by the respondents was 20%. There was a challenge against the said quota and the Hon'ble Supreme Court was pleased to allow the very same petitioner in Special Civil Application No.14346/2005 to give admission upto 50% as management quota seats. This has been decided in the case of **GSF Medical and Paramedical Association V/s. Association of Management of Self Financing Technical Institutes and another** reported in **AIR 2004 SC 1177.** The petitioner in the aforesaid Special Leave Petition is a petitioner in the present Special Civil Application No.13436/2005. This was for the

academic year 2003-04. Learned Senior Advocate appearing for the petitioners has also submitted that for the next year i.e. 2004-05, the respondents fixed management quota and government quota 50:50. This formula of 50:50 worked smoothly for the entire last year. For no reason, the respondents have now fixed initially 20% as management quota and in an appeal before respondent Committee, it was fixed as 33% as management quota, against the demand of petitioners for minimum 50% vide order dated 2nd July,2005. No valid reasons have been assigned in the impugned order dated 2nd July,2005 as to why 33% is fixed as management quota. It is also submitted by the learned senior advocate for the petitioners that it is not necessary for the respondents to change the percentage of management quota every year. Respondents cannot reshuffle percentages every year and petitioners cannot be left at the mercy and whims of respondents. Every year cannot be an year of uncertainty so far as quota is concern. It is excellent to have giant's strength; but it is tyrannous to use it like a giant. Respondents should not use their power “to produce” uncertainty. In fact, it ought to be decided once for all at least for few years or at least for three years. The need of the members of the petitioner ought to have been

kept in mind by respondents as per **para-19** of the **Islamic Academy's case (reported in (2003) 6 SCC 697)** and also as per the judgment delivered by the Hon'ble Supreme Court in the case of **P.A. Inamdar and others V/s. State of Maharashtra and others** reported in **(2004)8 SCC 139.** The phrase “their need” used in **para-19** of the **Islamic Academy's case judgment** has been explained. It is also submitted by the learned advocate for the petitioners that at the time of recognition, the management quota and the government quota should be fixed. Once it is already fixed, it ought not to be reshuffled every year. As stated hereinabove, for the Academic Year 2003-04 and 2004-05, it was 50:50. Nothing is referred in the impugned order as to what has made change in the local need and the need of the institution. The guiding factors have already been given in the aforesaid two judgments. Since last two years, the management quota was 50%. This formula also worked very smoothly but as stated in **para-2** of the **TMA Pai Judgment** reported in **(2002)8 SCC 481,** bureaucracy for its own self importance is reshuffling the ratio in the present case. The Hon'ble Supreme Court has fixed the 50% as per judgment delivered in the case of **GSF Medical and Paramedical Association V/s. Association of Management of Self Financing Technical**

Institutes and another reported in **AIR 2004 SC 1177.**

3. It is also contended by learned advocate for the petitioners that the basic reason for creating a government quota is that the reservation can be provided only in governmental institutions. The members of the petitioner association are self finance institutions and, therefore, the government quota is required to be fixed as per aforesaid two judgments namely **T.M.A. Pai case and Islamic Academy's Case judgments**. The government quota has to be fixed but in no case, it can be more than 50%. If the government quota exceeds 50% then the reservation, will be much more and it affects or impairs the right to establish and administer the college which includes right to admit the students. If the output of the students is to be maintained as excellent, the input (admission in a first year course) ought to be selected by the management and if more percentage of government quota is fixed, the Private Unaided Professional Colleges' output will be disturbed and it also tantamounts to violation of rights to establish and administer the college(s). Much more percentage of government quota affects the very working (like learning process, teaching process, discipline, etc.) of the college(s). It is also submitted by the learned senior advocate appearing for the petitioner that

the guiding factors for fixing quota, have been given in **T.M.A. Pai judgment** as well as in the **Islamic Academy's case judgment** like local need, need of the institution, need of the community in a particular State, the nature of professional course and like. After **T.M.A. Pai Foundation and others V/s. State of Karnataka and others,** reported in **(2002)8 SCC 481**, the management quota in a different States prevailing have been mentioned in **para-189** of the **Islamic Academy's judgment** reported in **(2003)6 SCC 697.** In **para-190** of the **Islamic Academy's judgment,** it has been held that unless there exists an exigency, normally the institutions will have the right to admit **a higher percentage of students depending upon their need.** However, all such students must be admitted only on merits and, therefore, 50:50 percentage of quota were fixed in a Islamic Academy's judgment. Thus, in several States, there were less than 50% of management quota seats barring State of Tamil Nadu but the Hon'ble Supreme Court as per **para-21** of the **Islamic Academy's case judgment** has fixed a ratio 50:50. The impugned decision of the Committee has not considered the aforesaid factors, which are enumerated in the aforesaid two judgments, especially **para-190 and 192 and para-6,7 & 8** of **P.A. Inamdar's case** reported in **(2004)8 SCC 139.** There

is not a whisper in the whole impugned order as to the need of the institution and, therefore, the impugned decision dated 2nd July,2005 deserves to be quashed and set aside and minimum 50% of the management quota may kindly be awarded.

4. Learned advocate Mr.N.D. Nanavati for the petitioners submitted that the basis upon which the impugned order dated 2nd July,2005 was passed is now no longer exists because of a decision given by the Full Bench of this Court vide order dated **15th July,2005** passed in **Special Civil Application No.10583/2005.** Out of two major reasons in the impugned order; one is to the effect that as Common Entrance Test is not allowed, to be held, by the management association. To give fair and equal opportunity, to the students of rural area, more percentage of government quota is fixed. But by the order of the Full Bench of this Court, Common Entrance Test is allowed, to be held, by the management association and, therefore, all the students are given equal opportunity to appear in the Common Entrance Test and, therefore, the major reason given in the impugned decision, which is running throughout in the order, as a golden thread, is no more in existence and, therefore, the impugned

decision deserves to be quashed.

5. I have also heard the learned advocate Mr.D.C.Dave appearing for the petitioners of Special Civil Application Nos. 13659/2005, 14336/2005 and 14349/2005. Learned advocate Mr.D.C.Dave has also canvassed, submissions, which are referred hereinabove and has further submitted that there is a sheer non-application of mind on the part of the respondents in fixing the management quota for the petitioners in the aforesaid three petitions. Reasons assigned in the impugned order dated 2nd July,2005 have nothing to do with the facts of the petitioners in the aforesaid three petitions. The main reason given in the impugned decision is that the Common Entrance Test, which may be held by the association of management of self finance institution has not been allowed to be taken by the respondents and to give equal opportunity to the students, who are residing in a rural area, the 33% of the management quota is fixed. These reasonings are not applicable to the facts of the petitioners. The petitioners have never demanded or insisted for holding, its own, Common Entrance Test nor have they opted, for Common Entrance Test, through management association. The petitioners in the aforesaid

three petitions are ready, to give admission, to students on the basis of merit list, prepared by the State of Gujarat, which is based upon the result of 12th Standard Science Stream examination. The petitioners of aforesaid three petitions are also accepting the fees standard whatever is fixed by the State of Gujarat. The base of the petitioners for giving admission in medical and paramedical courses is the same that of government medical colleges. Whatever merit list prepared by the Government, is acceptable and on that basis **alone,** the petitioners are ready and willing to give admissions to students. Whatever method for admission, the government medial/paramedical colleges are adopting, the same method the petitioners are following. **There cannot be a better transparent method for admission available with the petitioners than what is stated hereinabove**. In such a situation, government's interference is an unnecessary and unproductive load on the back of the petitioners in the form of governmental control. It thwarts, the process of education and is requires to be removed as per **para-2** of the **T.M.A. Pai's judgment** reported in **(2002)8 SCC 481.**

6. It is vehementally submitted by the learned advocate Mr.D.C.Dave for the petitioners that petitioner of

Special Civil Application No.13659/2005 namely Charotar Arogya Mandal is admitting the students in its medical college on the basis of marks in Physics, Chemistry, Biology but excluding the marks in Mathematics in the 12th Standard Science Stream Examination, as per Medical Council of India Regulations, whereas, the government in it an old, typical, traditional style, is compeling the management to give admission, to students even adding the marks of Mathematics. This had, in past, become a subject matter of dispute and the matter has gone to the Hon'ble Supreme Court and the Hon'ble Supreme Court in **Special Leave Petition (Civil) No.12294/2004** (against the order of Division Bench in L.P.A. No.1355/2004) had permitted the petitioner of Special Civil Application No.13659/2005 to fill up the management quota on the basis of methodology evolved by the said petitioner. The respondents in the case of the aforesaid three petitions ought to have fixed minimum 50% of the management quota seats. In fact, looking to the cause for fixing the government quota, as per the **T.M.A. Pai's judgment and Islamic Academy's judgment,** it appears that it was to create a reservation in the Private Unaided Institutions. Otherwise the reservation in a Private Institution is not permissible but such reservation can never exceed 50%.

7. The learned advocate for the petitioners Mr.D.C.Dave has argued the case of the petitioners at a very high level and has submitted a theory that it is like fundamental rights. Citizens are not surrendering the fundamental rights but rest of the rights are surrendered to the State but the fundamental rights are so fundamental to the citizens that the citizens have retained them. Likewise, all the seats are belonging to the management quota in the Private Unaided Institution but looking to the local need and the need to uplift, down trodden class, some government quota has to be craved out. On the basis of this theory also, government quota can never exceeds 50%. In fact, in the institution like aforesaid three petitions, it ought to be not less than 75%. If the meritorious standard of output is to be maintained, the input (admission in the first year M.B.B.S. Course, BDS Course, etc.) ought to be kept as meritorious as possible. More the reservation, probability of getting meritorious students will be reduced. Even in the present petitioners' case, management quota is upto 50% in the last year. There is no change in the need of the society (local need) nor there is change in any other relevant factors. It has

become a fashion for the respondents to alter every year the management quota. Petitioners cannot be throne at the mercy, whims, caprice and sweet will of the respondents and that too every year. Every year petitions are bound to be filed by the petitioners. Before the previous year matters are decided, next year batch of litigations, come before the Court. There is no need to change every year the management quota. The change is required, whenever necessary. The bureaucracy ought not to be allowed to show their self importance, which is deprecated in **para-2 of TMA Pai's case judgment.**

8. It is also submitted by the learned advocate Mr.D.C. Dave appearing for the petitioners that the reasons given in the impugned decision dated 2nd July,2005 are not applicable to the present petitioners. The decision making process in arriving at impugned decision is legally not tenable and is vitiated by considering, the irrelevant facts which are not applicable to the petitioners. Adequate opportunity of being heard was also not given to the petitioners before Committee. Learned advocate for the petitioner has stated in various annexures of the petitions and pointed out that several letters were written by the petitioners, especially, in

Special Civil Application No.13659/2005 and has pointed out that on 2nd July,2005, it was practicably impossible for the petitioners because of heavy rain at Anand district, to reach to the Committee at Ahmedabad, and, therefore, further time was sought for vide letter dated 2nd July,2005 but without affording an opportunity of being heard, respondent Committee took a decision on 2nd July,2005. This decision was never conveyed to the petitioners upto 7th May,2005 and, therefore, a letter dated 5th July,2005 was also written for being given an opportunity of being heard. Similarly, letter dated 6th July,2005 was also written and thereafter decision dated 2nd July,2005 was came to be known from newspapers. All these letters are annexed in the memo of the petition and, therefore also, the impugned decision deserves to be quashed and set aside.

9. I have heard the learned counsel appearing for the Committee, who has mainly submitted that the Committee has taken decision on 2nd July,2005. Looking to the need of the locality and the need of the institution, on the basis of various factors, a detailed reasoned order dated 2nd July,2005 have been passed. It is also submitted by the learned advocate for the Committee that there is no

fix rigid formula for fixing management quota as per **T.M.A. Pai and Islamic Academy's judgments**. Later development of an order passed by Full Bench of this Court in Special Civil Application No.10583/2005 with Civil Application No.5779/2005 may not be considered for the change of the impugned order. It is also submitted by the learned advocate for the Committee that very little is the scope for the judicial review. This Court is not sitting in an Appeal against the order passed by the Committee. Learned advocate for the Committee has also relied upon several authorities for the scope of judicial review and they are as under:-

(i)	(2002)3 SCC 496
(ii)	(1994)6 SCC 651
(iii)	(1990)2 SCC 746
(iv)	(1993)2 SCC 299
(v)	(2002)10 SCC 226
(vi)	(1996)3 SCC 709
(vii)	(1997)7 SCC 251
(viii)	(2002)6 SCC 252

10. I have also heard the Government Pleader, who has also submitted that looking to the local need and keeping in mind parameters referred in **T.M.A. Pai and Islamic Academy's case,** the government has fixed the management quota at 25%. In an appeal, as per **para-19** of the **Islamic Academy's judgment**, the respondent Appellate Committee

has reshuffled the quota and has fixed at 33% as management quota. The same is true, correct and legal and, therefore, these petitions may not be entertained by this Court.

11. Having heard the counsels for both the sides at length and keeping in mind the facts and circumstances of the cases and the judicial pronouncements in various cases, which are cited by the learned advocates for both the sides, I hereby quash and set aside the order dated 2nd July,2005 passed by the respondent Committee, mainly for the following facts and reasons :-

(i) The respondents have not considered the most important parameters for fixing the quota namely, the need of the institution itself. **Para-192** of the judgment delivered in **Islamic Academy of Education and another V/s. State of Karnataka and others,** reported in **(2003)6 SCC 697**, reads as under :-

> *"192. The percentage of seats will also depend upon the need of the community in a particular State **as also the need of the institution itself.** The nature of the professional course would also have relevance. All these factors must be taken into consideration by the appropriate committee or body so long a statutory regulation is not*

framed in this behalf."

(Emphasis supplied)

Similarly, as per **para-19 of Islamic Academy's case judgment**, the need of the Institution ought to be evaluated by the State. The relevant part of **para-19**, reads as under :-

> *"19. ..... It is clarified that different percentage of quota for students to be admitted by the management in each minority or non-minority unaided professional college(s) shall be separately fixed* ***on the basis of their need*** *by the respective State Government and in case of any dispute as regards fixation of percentage of quota, it will be open to the management to approach the Committee. .... "*
>
> *(Emphasis supplied)*

There is not a whisper in the whole impugned order dated 2nd July,2005, which reveals the facts that while taking a decision or in the course of decision making process, the aforesaid vital aspect has ever been thought of.

(ii) The relevant part of **para-68** of judgment delivered in **T.M.A. Pai Foundation and others V/s. State of Karnataka and others,** reported in **(2002)8 SCC 481,** reads as under :-

"68. ... It must be borne in mind that unaided professional institutions are entitled to autonomy in their administration while, at the same time, they do not forego or discard the principle of merit. It would, therefore, be permissible for the university or the Government, at the time of granting recognition, to require a private unaided institution to provide for merit-based selection while, at the same time, giving the management sufficient discretion in admitting students. This can be done through various methods. For instance, a certain percentage of the seats can be reserved for admission by the management out of those students who have passed the common entrance test held by itself or by the State/University and have applied to the college concerned for admission, while rest of the seats may be filled up on the basis of counseling by the State agency. This will incidentally take care of poorer and backward sections of the society. The prescription of percentage for this purpose has to be done by the Government according to the local needs and different percentages can be fixed for minority unaided and non-minority unaided and professional colleges. ....."

The aforesaid para-68 has been divided into seven parts for its analysis in the judgment delivered in **Islamic Academy's case** in **para-12** thereof. The relevant part of **para-12** of **Islamic Academy of Education and another V/s. State of Karnataka and others,** reported in **(2003)6 SCC 697,** reads as under:-

"12. ......

Fourthly, it is permissible for the University or the Government at the time of granting recognition to require an unaided institution to provide for merit-based admission

while at the same time giving the management sufficient discretion in admitting students.

Fifthly, for unaided non-minority professional colleges certain percentage of seats can be reserved for admission by the management out of those students who have passed the common test held by itself or by the State/University and for applying to the college/ University for admission, while the rest of the seats may be filled up on the basis of conselling by the State agency.

Sixthly, the provisions for poorer and backward sections of the society in unaided professional colleges are also to be provided for.

Seventhly, the prescription for percentage of seats in unaided professional colleges has to be done by the Government according to the local needs. A different percentage of seats for admission can be fixed for minority unaided and non-minority unaided professional collegs."

Thus, the aforesaid two paragraphs prescribes the need of government quota seats in the Private Unaided Professional Colleges. Generally, the reservation of seats will be in the government institution but to give benefit of reservation to the poorer and backward sections of the society or to uplift the socially and economically backward persons, the government quota has to be fixed for giving admissions in the medical and paramedical colleges. Looking to the aforesaid base for fixing the government quota and the need to preserve and maintain the autonomy of the institution, for achieving excellence in education and in fact for maintaining the right of the institution to establish and administer the

institution, such reservation normally cannot exceed 50% in Private Unaided Professional Colleges or Institutions. As per **para-50** of the judgment delivered in **T.M.A. Pai Foundation and others V/s. State of Karnataka and others,** reported in **(2002)8 SCC 481,** right to establish and administer the institutions have been explained and has been interpreted to include, the right to admit the students. The said para, reads as under:-

> *"50. The right to establish and administer broadly comprises the following rights:*
>
> *(a) to admit students;*
> *(b) to set up a reasonable fee structure;*
> *(c) to constitute a governing body;*
> *(d) to appoint staff (teaching and non-teaching); and*
> *(e) to take action if there is dereliction of duty on the part of any employees."*

In **paragraphs- 51 & 52 of the T.M.A. Pai's judgment**, it has been clarified that the governmental domination on the educational process must be resisted. The "State aid" was not to be confused with "State control" over academic policies and practices. (In the present case, there is no State aid, therefore, Governmental control should be minimal.) **Paras - 51 & 52** of the judgment delivered in **T.M.A. Pai Foundation and others V/s. State of Karnataka and others,** reported in **(2002)8 SCC 481,** reads as

under :-

"51. A University Education Commission was appointed on 4-11-1948, having Dr.S.Radhakrishnan as its Chairman and nine other renowned educationists as its members. The terms of reference, inter alia, included matters relating to means and objects of university education and research in India and maintenance of higher standards of teaching and examination in universities and colleges under their control. In the report submitted by this Commission, in paras 29 and 31, it referred to autonomy in education which reads as follows:

*"**University autonomy** – Freedom of individual development is the basis of democracy. Exclusive control of education by the State has been an important factor in facilitating the maintenance of totalitarian tyrannies. In such States institutions of higher learning controlled and managed by governmental agencies act like mercenaries, promote the political purposes of the State, make them acceptable to an increasing number of their population and supply them with the weapons they need. **We must resist, in the interests of our own democracy, the trend towards the governmental domination of the educational process.***

*Higher education is, undoubtedly, an obligation of the State **but State aid is not to be confused with State control** over academic policies and practices. Intellectual progress demands the maintenance of the spirit of free inquiry. The pursuit and practice of truth regardless of consequences has been the ambition of universities. Their prayer is that of the dying Goethe : 'More light', or that of Ajax in the mist 'Light, though I perish in the light.'*

* * *

The respect in which the universities of Great Britain are held is due to the freedom from governmental interference which they enjoy constitutionally and actually. Our universities

should be released from the control of politics.

***Liberal education**. - All education is expected to be liberal. It should free us from the shackles of ignorance, prejudice and unfounded belief. If we are incapable of achieving the good life, it is due to faults in our inward being, to the darkness in us. The process of education is the slow conquering of this darkness. To lead us from darkness to light, to free us from every kind of domination except that of reason, is the aim of education."*

52. There cannot be a better exposition than what has been observed by these renowned educationists with regard to autonomy in education. The aforesaid passage clearly shows that the governmental domination of the educational process must be resisted. Another pithy observation of the Commission was that State aid was not to be confused with State control over academic policies and practices. The observations referred to hereinabove clearly contemplate educational institutions soaring to great heights in pursuit of intellectual excellence and being free unnecessary governmental controls."

(Emphasis supplied)

Too much governmental control, which is unnecessary and unproductive load on the back of the educational institution must be removed. Private education is one of the most dynamic and fastest-growing segments of post-secondary education. A combination of unprecedented demand for access to higher education and the inability or unwillingness of the government to provide the necessary support has brought private higher education to the forefront. The need to protect the rights of the petitioners to establish and administer the Private

Unaided Professional Colleges has been explained in **paragraphs- 2, 48 & 49** of the judgment delivered in **T.M.A. Pai Foundation and others V/s. State of Karnataka and others,** reported in **(2002)8 SCC 481,** reads as under:-

> *"2. It is in this scenario where there is a lack of quality education and adequate number of schools and colleges that private educational institutions have been established by educationists, philanthropists and religious and linguistic minorities. Their grievance is that the unnecessary and unproductive load on their back in the form of governmental control, by way of rules and regulations, has thwarted the progress of quality education. It is their contention that the Government must get off their back, and that they should be allowed to provide quality education uninterrupted by unnecessary rules and regulations, laid down by the bureaucracy for its own self-importance. The private educational institutions, both aided and unaided, established by minorities and non-minorities, in their desire to break free of the unnecessary shackles put on their functioning as modern educational institutions and seeking to impart quality education for the benefit of the community for whom they were established, and others, have filed the present writ petitions and appeals asserting their right to establish and administer educational institutions of their choice unhampered by rules and regulations that unnecessarily impinge upon their autonomy.*
>
> ***Private unaided non-minority educational institutions***
> *48. Private education is one of the most dynamic and fastest-growing segments of post-secondary education at the turn of the twenty-first century. A combination of unprecedented demand for access to higher education and the inability or unwillingness of the government to provide the necessary support has brought private higher education to the forefront.*

> *Private institutions, with a long history in many countries, are expanding in scope and number, and are becoming increasingly important in parts of the world that relied almost entirely on the public sector.*
>
> *49. Not only has demand overwhelmed the ability of the Governments to provide education, there has also been a significant change in the way that higher education is perceived. The idea of an academic degree as a "private good" that benefits the individual rather than a "public good" for society is now widely accepted. The logic of today's economics and an ideology of privatization have contributed to the resurgence of private higher education, and the establishing of private institutions where none or very few existed before."*

Looking to the aforesaid right of the petitioners to establish and administer the institution and looking to the reasons of birth of Private Unaided Professional Colleges, as far as possible, the governmental control must be minimal. The right to establish and administer the institution includes right to admit the students. If the Private Professional Colleges want to maintain their output, they must be given enough and adequate freedom to select their inputs (students). Too much control of input (admission of students) in Professional College(s) will have tremendous effect upon the result, which is expected to be achieved by the Private Professional Colleges. But this does not mean that there cannot be any government quota in the Private Unaided Professional College(s). As

stated hereinabove, a government quota can be fixed for the poorer and backward sections of the society and for the upliftment of the socially and economically backward persons in the State and, therefore, there can be a reservation in the form of government quota seats. Unless this is an exigency, in my opinion, government quota normally cannot more than 50% in the Unaided Private Professional Non-minority Colleges.

(iii) It has been held in **paragraphs-189 and 190** of the judgment delivered in **Islamic Academy of Education and another V/s. State of Karnataka and others,** reported in **(2003)6 SCC 697,** reads as under:-

> *"189. Several States like the States of Tamil Nadu, Karnataka and Kerala have permitted the educational institutions to hold their own examination for the purpose of admitting students within their quota. Some of the students like Maharashtra and Gujarat insist on admitting the students through a common entrance test. The following chart gives a glimpse as to how different States understood the judgment of this Court differently:*

State	***Admissions***	
	Govt.	***Management***
Andhra Pradesh	*85%*	*15%*
Delhi	*95%*	*15% max*
Gujarat	*85%*	*15%*
Haryana	*15% AIEEE*	*15%*
	70% CEET 2003	
Karnataka	*75%*	*25%*
Kerala	*50%*	*50%*
Orissa	*85%*	*15%*

Tamil Nadu	*50%*	*50%*
Uttar Pradesh	*85%*	*15%*
Chhattisgarh	*60%*	*40%*
Maharashtra	*85%*	*15% (These seats must also be filled from the State common entrance test list)*

*190. **Unless there exists an exigency, normally the institutions will have the right to admit a higher percentage** of students depending upon **their need**. However, all such students must be admitted only on merit. In the event, some seats remain vacant, they must be filled by general category students strictly on merit."*
(Emphasis supplied)

The percentage of management quota referred in the **paragraph-189** is for "Post **TMA Pai's judgment Period"**. Barring the State of Tamil Nadu and State of Kerala in most of the State, Government quota was more than 50% and the management quota was less than 50%. The Hon'ble Supreme Court has observed that unless there exists an exigency, normally, the institution has the right to admit a **higher percentage of students** depending upon **their need**. Thus, as per this paragraph also, percentage of management quota should be more than the government quota. As per **para-192** of the **Islamic Academy's judgment**, there is a discussion of parameters, which may be kept in mind while fixing the percentage of seats. **Para-192** of the judgment delivered in **Islamic Academy of Education and another V/s. State of Karnataka and others,** reported

in **(2003)6 SCC 697,** reads as under:-

> *"192. The percentage of seats will also depend upon the need of the community in a particular State as also the need of the institution itself. The nature of the professional course would also have relevance. All these factors must be taken into consideration by the appropriate committee or body so long a statutory regulation is not framed in this behalf."*

Thus, in a Private Professional Colleges in the form of government quota, the State can take care of the poorer and backward classes of the Society. Looking to the need of the society or looking to the local need, Government Quota, should be fixed, but, at the same time, the need of the institution should also to be kept in mind by the government while fixing the government quota as the Private Unaided Professional Institutions are catering the dire need of or they are satisfying the quest of, the the Society, for getting post secondary education coupled with a fact that when there is inability or unwillingness of the government to provide the necessary support and keeping in mind right to establish and administer the Professional Institutions vested in the petitioners. The reservation in the form of government quota, generally, ought not to be, more than 50%, in the Private Professional Unaided Non-minority

Colleges/Institutions. It should be born in mind while fixing quota, a simple principle of panchtantra

> ***"One must keep the hen alive and should get the eggs."***

> "More reservation, in the form of Government Quota, will make it harder for a good institution, in maintaining "excellent standard".

Thus, the Private Unaided Professional Institution must be allowed to attain its height, must be allowed to grow, must be allowed to achieve and acquire excellence and the desired output, and at least, till then, the government quota (which is based upon several factors like local need, upliftment of poorer and backward classes) should not unless exigency exists, more than 50%, in Private Professional Unaided Non-minority Institutions.

The word "local needs" has also been discussed in **para-134** of the **Islamic Academy's judgment**. All the aforesaid factors have not been considered by the respondents while fixing the quota and, therefore also, decision dated 2nd July,2005 deserves to be quashed and

set aside.

(iv) As per **para-21** of the **Islamic Academy's case**, the quota fixed for the institution and the State Government was in the ratio of 50:50 for the assessment year 2003-04 is concerned. **Para-21** of the judgment delivered in **Islamic Academy of Education and another V/s. State of Karnataka and others,** reported in **(2003)6 SCC 697,** reads as under:-

> *"21. So far as the year 2003-04 is concerned, time is running out as the outer time-limit for admission is fast approaching or has gone. To meet the urgent situation without going into the issues involved in the various petitions/applications, we direct that the seats be filled up by the institution and the State Governments* ***in the ratio 50:50****. However, if by any interim order, this Court has permitted any institution to fill up a higher percentage of seats* ***and the seats have been filled up accordingly,*** *the same shall not be disturbed. It is made clear that due to the time constraint this arrangement has been made, without deciding the contentions issue involved in various pending cases."*
>
> *(Emphasis supplied)*

(v) Similarly, as per the order dated 1st June, 2005 passed by the Hon'ble Supreme Court in **IA No.3 in Writ Petition (Civil) No. 357 of 2004,** between **Christian Medical College Ludhiana Society and others V/s. State of Punjab and others**, reads as under:-

> *"Having perused the observance of this Court in Para 17 of Islamic Academy of Education and Anr. V/s. State of Karnataka and Ors. (2003)6 SCC 697 and the interim order passed by this Court on 9.8.2004 pertaining to the admission of students last year* ***and having regard to the fact that the decision of seven Judge bench of this Court is awaited****, we consider it just and proper to pass the following order for the year 2005-06 :-*
>
> ***75% of the seats can be filled up by the petitioner-institution according to its choice*** *subject to the observance of merit from among the candidates belonging to the minority community. Balance 25% seats shall be filled up by the candidates allotted by the State on the basis of the merit list prepared by it.*
>
> *I.A. is disposed of accordingly."*
>
> *(Emphasis supplied)*

Thus, in the aforesaid judgment for the assessment year 2005-06, 75% of seats were allowed to be filled up by the petitioner institution.

(vi) Similarly, in a case decided by the Hon'ble Supreme Court between **GSF Medical and Paramedical Association V/s. Association of Management of Self Financing Technical Institutes and another** reported in **AIR 2004 SC 1177**, as per **para-6** thereof that the petitioners management association can give admissions upto 50% in the management quota seats.

(vii) Similarly, it is decided by the Hon'ble

Supreme Court in **P.A. Inamdar and others V/s. State of Maharashtra and others** reported in **(2004)8 SCC SCC 139.** The Hon'ble Supreme Court allowed the management quota and government quota as 50:50. **Para 6,7 & 8** of the aforesaid judgment, reads as under :-

> *"6. The sentence in the judgment of Islamic Academy which appears to have created the debate between the parties is: (SCC p.730, para 19)*
>
> > *"It is clarified that different percentage of quota for students to be admitted by the management in each minority or non-minority unaided professional college(s) shall be separately fixed **on the basis of their need** by the respective State Governments and in case of any dispute as regards fixation of percentage of quota, it will be open to the management to approach the Committee."*
> >
> > *(Emphasis supplied)*
>
> *7. According to the institutions the phrase **"their need" refers to the need of the minority or non-minority unaided professional college(s).** The State Government, on the other hand, has contended that the phrase meant local needs or the needs of the State Government and not that of the institutions. The issue will ultimately have to be resolved by a larger Bench. **We are, prima facie, of the view that the phrase "their needs"** in the sentence quoted above **refers to the need of the institution** mentioned and **not of the State**.*
>
> *(Emphasis supplied)*
>
> *8. In the circumstances, **we are of the view that** the interim measure as stated in paragraph 21 of Islamic Academy namely, that the seats should be filled up by the institutions concerned **in the ratio of 50:50** will be continued for this academic year purely as a temporary measure and without prejudice to the contentions of the parties for the purpose of*

the final disposal."

(Emphasis supplied)

Thus, keeping in mind **paras- 19, 21, 190 and 192 of the Islamic Academy's judgment** and keeping in mind the **para-68 of the T.M.A. Pai's judgment** to be read with paragraphs of the aforesaid judgments, narrating the need of reservation or government quota and the aforesaid judgment delivered by the Hon'ble Supreme Court, unless there exists exigency, management should have a right to admit a higher percentage of students, depending upon their need. For maintenance of autonomy in education and to balance the right to establish and administer the educational institution of the petitioners, the Government should not have more percentage of the quota than that of management quota, except there being exigency **or** existence of exceptional circumstance. Of course, there cannot be a hard and fast formula for fixing the quota. Mathematical nicety and the statistical accuracy is, not expected, while fixing the quota. A local need, the need of the institution, the nature of professional courses are the relevant factors for fixing the government quota. The need of the institution should not be neglected by the State. Percentage will have to be worked out, having regard to the need, Local as well as of Institution. Relevant part of **para-176** of the judgment

delivered in **Islamic Academy of Education and another V/s. State of Karnataka and others,** reported in **(2003)6 SCC 697,** reads as under :-

> *"176. ..... What is explained in T.M.A. Pai is that there cannot be any fixed percentage. Each case will have to be considered on its own merits.* ***Need of the institution should be the prime concern****. Percentage will have to be worked out having regard to the need only."*
>
> *(Emphasis supplied)*

Para-19 of this very judgment has also referred the words "their need" as relevant criteria for fixing Quota.

This has also been emphasized in **P.A. Inamdar's judgment reported in (2004)8 SCC 139 in paras - 6,7 and 8** thereof. This need of the institution has not been considered at all by the respondents and, therefore, the impugned order deserves to be quashed and set aside.

(viii) Major part of the reasoning, in the impugned order dated 2nd July,2005 of the respondents for fixing government quota at 67% is to the effect that Common Entrance Test is not allowed to hold and when there is no Common Entrance Test allowed to be taken by the management association, the poorer and socially and economically backward students will not have a chance to appear in a Common Entrance Test and, therefore, to give

equal opportunity to students, who are coming from rural area, government quota is fixed at 67%. This reasoning looking to the order passed by the Full Bench of this Court dated 15th July,2005 in Special Civil Application No.10583/2005, is now no longer in existence. Now, as per the decision of the Full Bench of this Court, the Common Entrance Test is allowed to hold on 14th of August,2005. All the students will get equal opportunity to appear in the Common Entrance Test held by the management. This one of the major reason for fixing 67% government quota, is now no more in existence and, therefore, the matter requires reconsider at the behest of respondent No.2.

(ix) Similarly, so far as petitioners of Special Civil Application Nos.13659/2005, 14336/2005 and 14349/2005 are concerned, the reasons given in the impugned order dated 2nd July,2005 are based upon the facts, which are not applicable to those petitioners. The major reason given in the impugned order is no Common Entrance Test is allowed to be held and, therefore, to give benefits to the students, who are coming from rural area, the government quota is fixed at 67%. But petitioners of the aforesaid three petitions have already chosen or opted, not to hold Common Entrance Test and they have opted to

give admission to the students in their, medical or para-medical colleges on the basis of the merit of 12th Standard Science Stream Examination held by Gujarat Secondary and Higher Secondary Education Board. Whatever is the basis of admission in the government colleges, is accepted as the basis of admission at the colleges run by those three petitioners. This aspect of the matter has not been properly appreciated by the respondents. It appears that common order has been passed for all the medical and paramedical colleges by the respondents and, therefore, common is the reasoning. But the facts of the aforesaid three petitions are different then the facts of the petitioner of Special Civil Application No.13436/2005 and, therefore, on the basis of some other facts, the impugned decision dated 2nd July,2005 has been passed for the petitioners in the aforesaid three petitions. Therefore also, the impugned decision deserves to be quashed and requires fresh decision to be taken, for these three petitioners. They are not claiming any Common Entrance Test. They are ready and willing to accept the merit list, whatever is prepared by the State Government on the basis of 12th Standard Science Stream Examination. Thus, they have surrendered their right to choose the students. Whosoever is surrendering the right to choose

the students, in my opinion is remaining out of clouds of allegations that managements are encashing the right to choose the students. In such a situation, the management quota should be more than the government quota, as per **para-190** of **Islamic Academy's case**, especially when, these petitioners are also accepting the fees fixed by the government. It is rightly pointed out by learned advocate Mr.D.C.Dave appearing for the petitioners in the aforesaid three petitions that if the more percentage of management quota is given, the petitioners would get more meritorious students by effective counseling. Counseling places an important role. As per **Medical Council of India V/s. Madhu Singh and others,** reported in **(2002)7 SCC 258, counselling** are some of the stages of admission process. **T**here is a vast different between counseling by government and counseling by Private Institution. From the very same merit list prepared on the basis of 12th Standard Science Stream Examination taken by the Board, the petitioners of the aforesaid three petitions could have convinced more meritorious students to get entry in their colleges by effective counseling. States counseling is mechanical whereas that of, petitioners is full of application of mind. So far as these three petitioners are concerned, they are at par with the government in so

far as method of choosing of students is concerned, therefore, management quota should be more than the government quota so that right to establish and administer the educational institution can be properly availed and desired output in the form of excellence in education can be given by these Private Unaided Professional Colleges. This forms part of “need of the institution”. This need has not been appreciated by the State while fixing the quota. It may be borne in mind, nowadays, that more meritorious students are giving priority in getting admissions in Private Colleges than that of government colleges. This may not be true as on today for medical faculty, but, it is submitted that this is true for engineering faculty. Private Institutions have gone far ahead, than the governmental institutions imparting Professional Education. What is true today for engineering faculty may become a matter of fact for medical faculty tomorrow provided as per **para-2 to be read with para 48, 49, 51 and 52 of T.M.A. Pai's judgment**, if the Private Institutions are allowed to grow despite their teething problems by removing unnecessary and unproductive load from their back, in the form of Government Control. The petitioner of Special Civil Application No.13659/2005, from various annexures along

with the memo of petitions appears that was craving for hearing before the Appellate Committee. Right from 4th May,2005 (Exh.D) then 21st May,2005 (Annexure “E”), 28th May,2005 (Annexure “F”), 14th June,2005, 16th June,2005, 27th June,2005 and lastly on 2nd July,2005 also, letters have been written for giving personal hearing. Even on 5th July,2005, a letter was written. Similarly on 6th July,2005, a letter has been written. All these letters are forming part of the petition namely Special Civil Application No.13659/2005. It appears from the records of the case that the respondent No.2 took decision on 2nd July,2005. The same was came to be known to the petitioner on 6th July,2005 as a news item from the newspaper. Thus, the petitioner was not heard and, therefore also, the impugned order deserves to be quashed and set aside and the matter requires to be reconsidered the fresh hearing.

(x) Learned counsel appearing for the respondent No.2 Committee has relied upon several decisions as stated hereinabove and submitted that very little is the scope for judicial review and this Court may not interfere with the final decision taken by the respondents. But as stated hereinabove, the decision making process is vitiated. The relevant factors have not been considered

to fix the management quota and government quota. Certain irrelevant facts have been considered for the three petitioners of Special Civil Application Nos.13659/2005, 14336/2005 and 14349/2005. There is also breach of principle of natural justice in so far as petitioners of Special Civil Application No. 13659/2005 is concerned and the major part of the reasoning in the impugned decision (to the effect that no Common Entrance Test is allowed by the State Government to be held by the management), is no longer now, in existence, because of decision of Full Bench dated 15th July,2005 passed in Special Civil Application No.10583/2005. As a conjoint effect of the aforesaid facts, the decision making process in the impugned decision dated 2nd July,2005 is vitiated, and, therefore, this Court has all power, jurisdiction and authority in exercise of its extra ordinary jurisdiction under Article 226 and 227 of the Constitution of India to evaluate the impugned decision taken by the respondents.

12. For the earlier academic years, quota was fixed, either by the Court or by the Government as 50:50 i.e. for the years 2003-04 and for 2004-05. Once it was so fixed by Hon'ble Supreme Court for the petitioner of Special Civil Application No.13436 of 2005 as per case reported in AIR 2004 SC 1177. Government should not

reshuffle or alter the percentage of quota every year, unless there are cogent and convincing reasons. Several factors must have weighed either to the Court or to the Government in fixing quota for earlier academic years. Unless change in these factors are referred, the percentage of quota ought not be changed every now and then. Petitioners cannot be throne at the realm of uncertainty, every year or they cannot be thrown at the mercy, caprice or whims of the respondents. Every year cannot be converted into year of uncertainty so far as quota is concern. It is not obligatory for Government to change the percentage of quota, every year. Change should be made whenever necessary.

13. As a cumulative effect of the aforesaid facts, reasons and judicial pronouncements in various aforesaid decisions, I hereby quash and set aside the impugned decision of the respondents dated 2nd July,2005. So far as present academic year 2005-06 is concerned, as the time is running out, I, therefore, allow the petitioners to admit the students upto 50% of total intake capacity as management quota seats, for the current academic year, i.e. 2005-06. The outer time-limit for admission is fast approaching or has gone, in view of the judgment delivered by the Hon'ble Supreme Court in **Medical Council**

of India V/s. Madhu Singh case and others, reported in **2002(7) SCC 258**, especially **para-25** thereof. The schedule for completion of admission process for first year M.B.B.S. Course as per Appendix-E, which was published by Medical Council of India under section 33 of the Indian Medical Council Act,1956. These regulations may be called the “Graduate Medical Education (Amendment) Regulations, 2004”, reads as under:-

“APPENDIX – E

TIME SCHEDULE FOR COMPLETION OF THE ADMISSION PROCESS FOR FIRST MBBS COURSE

Schedule for Admission	**Seats filled up by Central Govt. through All India Entrance Examination**	**Seats filled up by the State Govts./ Institutions**
Conduct of Entrance Examination	Month of May	Month of May
Declaration of Result of Qualifying Exam./ Entrance Exam.	By 5th June	By 15th June
1st round of counseling/ admission:	To be over by 30th June	To be over by 25th July
Last date for joining the allotted College and Course:	Within 15 days from the date of allotment of seat@@	31st July
2nd round of counseling for allotment of seats from Waiting List:	To be over by 8th August	Upto 28th August

Schedule for Admission	**Seats filled up by Central Govt. through All India Entrance Examination**	**Seats filled up by the State Govts./ Institutions**
Last date for joining for candidates allotted seats in 2nd round of counseling from the Waiting List	Within 15 days from the date of allotment of seat. (Seats vacant after 22nd August will be surrendered back to the States/ Colleges)	31st August
Commencement of academic session:	1st of August	
Last date up to which students can be admitted against vacancies arising due to any reason :	30th September	

NOTE: @@ Head of the Colleges should intimate the vacancies existing after the last date for joining the course by the candidate concerned in respect of the All India Quota of seats to the DGHS within seven days and latest by 23rd of July."

Thus, the time is running out as the outer time limit is fast approaching, therefore, in this academic year, i.e. 2005-06, the ratio of quota will be 50:50 percentage in Private Professional Unaided Non-minority Institutions. I hereby direct the respondents to decide

henceforth, quota of seats in light of the aforesaid observations and factors which are referred in the above cited/referred judicial pronouncements. Rule made absolute, in all these petitions to the aforesaid extent with no order as to costs.

14. Learned Counsel appearing for the State after pronouncement of the aforesaid judgment, sought for the stay of the operation, implementation and execution of the aforesaid judgment pronouncement by this Court. Looking to the facts and circumstances of the case, I see no reason to grant a stay of the operation, implementation and execution of the judgment passed by this Court in the aforesaid Special Civil Applications.

(D.N. PATEL, J)

(dipti)